BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The judgment of the United States Circuit Court of Appeals for the Seventh Circuit affirmed the decision of the United States District Court for the Eastern District of Illinois, without formal opinion.

The opinion of the United States District Court for the Eastern District of Illinois was entered by the Honorable Walter C. Lindley and appears in the transcript of record, pages 74 to 85 inclusive; the affirmance of that opinion by the United States Circuit Court of Appeals appears at page 103 of the transcript of record.

II.

Jurisdiction.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by Act of February 13, 1925.

Date of Judgment.

The judgment in the United States Circuit Court of Appeals was rendered November 10, 1944. No formal petition for rehearing was filed but a motion to recall the mandate was made and denied.

III.

Statement of Case.

A statement of the pleadings and formal procedures has been made in the petition for the writ of certiorari, such matters accordingly are not being here repeated. The pleadings, however, do disclose the factual situation giving rise to the present amended information, conviction and judgment in the Circuit Court of Piatt County, Illionis, originally, and of the appeal of that judgment to the Supreme Court of the State of Illinois, and later the petition for habeas corpus by the petitioner to the United States District Court for the Eastern District of Illinois, and its denial of that petition; the appeal from that decision by the petitioner to the United States Circuit Court of Appeals and of its affirmance of that judgment and without opinion, and now is being presented this petition for certiorari to the United States Supreme Court.

Petitioner, it appears from these records, has been at odds with other practicing attorneys at the bar of his county of Piatt, Illinois, for several years, and as one method of upholding, or attempting to uphold, his rights then as a former practicing lawyer and informing the public concerning the various activities of the various prosecutions against him, etc., he commenced, on February 12, 1941, the publication of a paper or pamphlet he designated as the Liberty Press. This publication appeared as occasions seemed to demand, and, on the average, amounted to approximately four thousand copies of each issue. It was distributed by common newspaper carrier boys who deposited them upon the porches of the homes of the various citizens of Piatt County, Illinois, and were variously mailed to citizens of rural parts of said Piatt County by a staff of High School girls who worked from mailing lists

which included practically all prominent citizens of the county, public officials, supervisors, judges, clerks, highway commissioners, precinct committeemen, and persons of influence in the county generally. Suffice it to say that the publisher in every publication felt at liberty and duty-bound to speak his mind freely, and, whenever necessary or expedient, he gave detailed facts, figures, dates, records and the names of witnesses, disclosing improper conduct, unfair dealings, untruthful statements, coercion, intimidation and unethical practice on the part of certain attorney members of the bar of that county, including State's Attorney Carl I. Glasgow.

Petitioner in several publications published that State's Attorney Carl I. Glasgow was not a fair and impartial prosecutor, giving in each instance, however, illustrations in fair detail justifying such accusations. In various issues of his Liberty Press the petitioner openly and repeatedly invited civil suit for damages at the hands of State's Attorney Glasgow or any other person who considered himself lawfully damaged by such publications and specifically stated, if and when such damage suit should be instituted by any aggrieved person, he, the petitioner, would prove the truth of the charges so made in his publications and that the same were published for justifiable ends.

No civil suit for damages has ever been instituted against the petitioner, but State's Attorney Glasgow and other attorneys have resorted to the present information alleging contempt of court as being a safe manner to them in which to strike back at the petitioner; Mr. Glasgow being himself the complaining witness before the grand jury, it was necessary that a special State's Attorney be appointed to conduct any grand jury proceedings against this petitioner. A special order was obtained by State's Attorney Glasgow appointing Oliver D. Mann of Danville, Illinois, a practicing attorney there, to conduct the ensuing grand

jury proceedings and investigation, but such order, however, limited the proceedings of such grand jury to the single task of investigating and indicting this petitioner. The grand jury was not called to investigate all crimes and misdemeanors in Piatt County, but was called and specifically charged with the sole and only purpose of indicting this petitioner, of which petitioner was not reliably informed until December 23, 1941. After learning of the nature and purpose of these grand jury proceedings the petitioner continued to exercise the right as a citizen of informing the public through the Liberty Press of what he deemed to be official misconduct in Piatt County; and he exercised also the right of the citizen when made the subject of unjust attack or the threatened improper use of the criminal process to defend himself before the bar of public opinion, a right which is preserved to him under the Constitution of the State of Illinois and a duty which he owes to himself, his own family and those who bear his name.

The amended information is predicated upon the thought that the articles did reach the hands of the grand jurors and necessarily therefore unlawfully influenced the actions of the grand jury, or unlawfully tended to do so, and interfered with the processes of the court and the due administration of justice in a criminally unlawful way.

The theory of the prosecution in the Circuit Court of Piatt County was and is so broad that it would comprehend the following situation: if a newspaper published in the City of Chicago, Illinois, had been engaged in publishing a series of articles on conditions in down-state counties, including Piatt County, in which the identical facts printed in the Liberty Press had been included, and had copies of such paper in the ordinary course of mail, or circulation from newsstands, or through transmission by private individuals in Piatt County, reached the grand jurors, the

publisher of the paper would have been held in contempt. The soundness of this legal theory the petitioner has contested in every court heretofore.

The grand jury with whose deliberations this petitioner was charged with interfering was convened to investigate the conduct of this petitioner to ascertain whether he had through the publication of facts and opinions in the Liberty Press, been guilty of criminal libel in violation of the Statutes of the State of Illinois. The petitioner has maintained in the courts below that the statements in the Liberty Press did not constitute criminal libel under the Statutes of Illinois because they were within the federal constitutional guarantees of free speeech and free press. The petitioner has also at all times taken the position that the circulation of the Liberty Press with the various statements of facts therein, in the normal and ordinary course of the mail, or by house to house delivery among the citizens of Piatt County, including the said grand jurors—as the answer shows how they were delivered, if delivered—could not be regarded as undue or illegal interference with the courts and the due administration of justice, because the statements and the circulation thereof were accomplished within federal constitutional guarantees for free speech and free press.

As to the petition for habeas corpus filed in the United States District Court for the Eastern District of Illinois, the facts contained therein having been set out in the pleadings and statements hereinbefore, so no useful purpose can be here served in restating them again, but, in brief, the grounds relied upon are to the effect that the filing of the amended information in the Circuit Court of Piatt County, Illinois, did not contain any good and sufficient grounds to support the judgment of the court entered thereon; that the offenses charged were not acts

of contempt committed within the presence of the court, but were acts committed—if at all—beyond the presence of the court; that the verified answer of the petitioner to the amended information purged the petitioner of all charges even if they were otherwise competent and proper charges,—which petitioner denies that any were proper or competent charges; that the judgment being void, the order of commitment was void and that the imprisonment of this petitioner under a void order constitutes and is a proper matter for the petitioner to be relieved of under the constitution of the United States and the decisions of this court; that petitioner had exhausted all remedies under the laws of the State of Illinois to avoid serving of the jail sentence and the payment of the fine; that under these factual matters of record petitioner earnestly contends that his rights under the federal constitution have been violated and will continue to be violated unless he is saved therefrom by the order and judgment of this honorable Court. Petitioner believes that he has been denied due process of law and has been deprived of his liberty in violation thereof through the decisions of the courts of Illinois, and the decisions of the two lower federal courts.

Petitioner does not cover in either the petition or the brief herein, the question whether or not he has exhausted all of his remedies in the State Courts and for two reasons,—first, he believes that the record clearly shows that all such remedies have been exhausted within the requirements laid down by this Court; secondly, and because the point was not decided by either, the United States District Court, or the Circuit Court of Appeals.

IV.

Specifications of Error.

1. That the Circuit Court of Appeals for the Seventh Circuit erred in affirming the decision of the United States District Court for the Eastern District of Illinois and in adopting as its own the opinion of Judge Walter C. Lindley of the District Court for the Eastern District of Illinois, which opinion appears at R., pp. 74-85.

Bridges v. *State of California*, 314 U. S. 252.

2. Said Court erred in holding that the petitioner had not been denied due process of law through abridgment or the deprivation of the right of free speech and free press by the action of the Circuit Court of Piatt County, Illinois.

The District Judge Walter C. Lindley, in the opinion adopted by the Circuit Court of Appeals, refers to an Act of Congress forbidding communication with Grand Jurors. (Rec. p. 80.) There is no such statute in Illinois, and if copies of the Liberty Press reached Grand Jurors (Rec. pp. 27-29), no statute of the State of Illinois was violated thereby. Singularly, however, the Judge does not refer to another and interesting aspect of the development of legislative policy in relation to indirect contempt of the Federal Courts. In 1831, Congress took away from the Federal Courts the power to punish as contempts, acts committed out of their presence. (4 Stat. 487, 28 U. S. C. A. 385.) This has been the fixed policy of the United States for over one hundred years. It is now settled that there must appear "clear and present danger" in order to justify "restrictions upon expression where the substantive evil sought to be prevented by the restrictions is destruction of life, or property, or invasion of the right of privacy." (*Bridges* v. *State of California*, 314 U. S. 252, 262, 62 S. Ct. 190, 193.) The Court there said that the criteria "applicable under the Constitu-

tion to other types of utterances" are applicable "in contempt proceedings to out-of-court publications pertaining to a pending case." (314 U. S. at page 268.)

It is respectfully submitted that there is no evidence in the record to support the view, that there was present, such a "clear and present danger" that a "substantive evil—extremely serious", and of a "degree of imminence extremely high", impended unless restrictions upon the free constitutional right of expression were inforced. The record does not support the conclusion that the published statements were either "an inherent tendency", or a "reasonable tendency", to interfere "with the orderly administration of Justice", and yet neither of these is sufficient to justify restrictions on free expression. (314 U. S. 272, 73.)

It is rather surprising to find a decision on a matter involving the right of a press to be free, which not even mentions the standards above quoted, and in the light of which any attempted repression of a free speech and a free press must be examined. While this fact may not be conclusive, it is pertinent to note that the attempt, if one was made, to interfere with, or affect, the course of justice, failed, because the Grand Jury did, in fact, indict this petitioner under the criminal libel statute of the State of Illinois. The Bridges case indicates that what ~~virtually~~ happened, is not unimportant in such a case as this one. This Court rightly said in *Bridges* v. *State of California* (314 U. S. 252), "But we cannot ~~stand~~ with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for Judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases." Neither is it necessary, or proper, to "close all channels of public expression" upon matters which a Grand Jury may consider, for it must be assumed that men and women, as well as Judges—who too are but men and women—have both moral ~~vicissitude~~ and

moral courage, as well as intelligence, sufficient also to weigh facts and pass fair judgment thereon, in spite of comment from persons who are still free to express themselves.

3. Said Court erred in holding that the statements published and circulated by the petitioner constituted an unlawful effort to prevent an indictment of the petitioner by the Grand Jury of Piatt County.

See argument under error 2 above.

4. Said Court erred in holding that the publication of the statements referred to in the preceding assignment of error, before an indictment had been returned, constitutes contempt of court, whereas, such publication after a decision, but before sentence, would not be contempt.

While the fact in the case of *Bridges* v. *State of California*, *supra*, was that the matter complained of had been published after indictment, but prior to the pronouncing of the sentence by the Court, no point is made in the opinion tending to show that the Court deemed the point of time in the course of the trial of the proceedings of any importance upon the question, whether or not, contempt had been committed.

Obviously, there can be no such distinction if the judicial process in a given case has not been completed before the acts charged to be contumacious have been committed. It is, ordinarily, entirely immaterial at what stage in the proceedings the acts are committed.

5. Said Court erred in holding, that advising the Grand Jurors through the publication of the Liberty Press correctly, as to the law and the procedure, unlawfully interfered with the due administration of justice and therefor was contempt of court.

If this is intended as a serious statement of a rule of law which may result in the suppression of a right of a free press, it is ~~so~~ obviously ~~uncertain~~, and of course, is wholly without support in the authorities.

It baffles our ingenuity to expose the fallacy of it,—how a correct statement of the law when brought to the attention of the Grand Jurors, can constitute an unlawful and undue interference with the process of justice, can not be comprehended by any lawyer in the United States of America, as yet. The author of this brief knows of no circumstances in which a correct statement of the law should constitute contempt of Court.

6. Said Court erred in holding that it necessarily constituted contempt of court for this petitioner to urge the duly constituted authorities of Piatt County, including the Grand Jury, to investigate illegal acts, or conduct, committed by other persons in Piatt County.

Here, again, the author of this brief must confess his inability, either to understand the proposition as stated by the lower Courts, or to find authority anywhere in support of it.

In a free country, like ours, it is not only the right of a citizen, whoever he may be, to bring to the attention of the duly constituted authorities, violations of the law,—and as early as 1797, a law of the Congress of the United States, subjected the individual citizen to penalties, if, notwithstanding knowledge of criminal conduct, he remained silent and did not complain. As indicated in the case of *Bridges* v. *State of California*, the public is interested in the complete freedom of expression and criticism upon public officers,—nor are prosecuting officers, or States Attorneys of Illinois, immune against this fundamental principle of American political life.

7. Said Court erred in holding that the decision of the Illinois Courts, to the effect that the statements of fact published in the Liberty Press "contained inherently a great likelihood of directly influencing to a serious degree the administration of justice", for the reason that unless it appeared—(as it did not)—namely, that the alleged interference through the exercise of the freedom of speeech

and of the press, was calculated to a substantial degree, to impede, or interfere with, the due administration of justice, there can be no contempt of Court.

What we say under specifications of error, Number 2, is affirmatively apt here. There was no "clear and present danger that a substantive evil, extremely serious and of a degree of imminence extremely high," would result, or resulted, from the statements circulated in the Liberty Press and impede the administration of justice.

The decision of the Supreme Court of Illinois is not, in this case, binding on this Court. The interpretation of local law and the holding of State Courts as to the meaning thereof, while generally accepted as conclusive in the Federal Courts, are not universally so. As stated in the Dred-Scott case, in the opinion of Mr. Justice McClean, "There are, it is true, many dicta to be found in our decisions, averring that the Courts of the United States are bound to follow the decisions of the State Courts on the construction of their own laws. But although this may be correct, and a rather strong expression of a general rule, it cannot be received as the enunciation of a maxim of universal application."

Dred-Scott v. *Sandford*, 19 How. 393, Page .....

8. Said Court erred in affirming the decision of the lower court and basing such affirmance upon the statement that "Grand Jurors proceeded directly to petitioner to discuss the matters and charges appearing in the Liberty Press, and being investigated by the Grand Jury", and deducing therefrom that the "administration of justice was actually interfered with." The initiative here was admittedly taken, not by the petitioner, but by the Grand Jurors themselves,—they exercising the historical function of Grand Jurors.

In the first place, it is clear that the petitioner did not seek out the Grand Jury, or the Grand Jurors, as indicated in this statement by the Court, but merely

took part in a discussion, initiated outside the Grand Jury room, and by the Grand Jurors themselves.

The Grand Jurors were not in the custory of an officer; they were free to pass from place to place, visit as they chose, and to discuss any matters that they chose with any citizen; neither did the Grand Jurors, or this petitioner, violate any law in the State of Illinois in doing what the Court, in its opinion, says they did. This ~~pretended~~ alleged contempt, or resort to this circumstance as an ingredient in a contempt of court, is incomprehensible to a lawyer and wholly indefensible.

9. Said Court erred in holding that the imposition of a sentence of three months in jail and a fine of two thousand dollars was not a violation of the federal constitution and specifically the Fourteenth Amendment thereof, as a cruel and unusual punishment.

It is respectfully submitted, without elaboration, which might unduly extend this brief, that no conviction of contempt in the whole history of the United States has brought such a severe sentence in a case where the facts and circumstances were no more convincing, or putting it differently, are as unsubstantial, as they are, in this case.

10. Said Court erred in its interpretation of the answer of petitioner in holding that the answer did not have the effect of purging him of the contempt charge.

The conclusion of the Court that the answer did not purge petitioner of the contempt charged, is entirely inconclusive. The burden to prove contempt, as charged in the information, was at all times upon the State. The burden was never upon the defendant to prove himself innocent; it was upon the State to prove him guilty. It may be conceded for argument—a concession in ~~the~~ fact we do not make—that the answer does not contain a technically complete defense. That has no bearing on the case and does not relieve the State from proving affirmatively, that a contempt was committed. If, therefore, as we contend the record

clearly shows, the information and the evidence produced by the State, did not, if admitted in its entirety to be true, constitute contempt of Court, the character of the answer is unimportant.

11. Said Court erred in holding that this petitioner admitted in his answer any unlawful delivery of the Liberty Press to any grand juror.

Petitioner admitted in substance and effect, that copies of the Liberty Press were delivered, or might have been delivered, at the homes of some or all of the Grand Jurors, as well as at the homes of nigh all of the other citizens in Monticello and in Piatt County, in the usual way, however, and in conformity with the usual method of its distribution, and not differently. Petitioner also admitted that copies might have been given upon request to some Grand Jurors who voluntarily called upon the petitioner at his office. (Rec. pp. 27-28.) The fact that copies of the Liberty Press in the normal and usual course of circulation, reached Grand Jurors, was no violation of any Statute of the State of Illinois, or of the United States, and cannot, under the criteria laid down in the case of *Bridges* v. *State of California*, constitute contempt of Court.

12. Said Court erred in holding that the state courts correctly decided that the petitioner had failed to purge himself of the contempt charge.

This has been dealt with under the foregoing assignment of errors and will not, at this time, be further elaborated, excepting to say that it has become Hornbook ~~brook~~ law that the decisions of the state tribunals interpreting the statutes of the State, are not binding or conclusive upon the Federal Courts when it is asserted by persons or corporations that rights secured them by the Federal Constitution are abridged, or violated by the interpretation challenged.

The adjudication of the Circuit Court of Piatt County, which was affirmed by the Supreme Court of Illinois, that the finding of the petitioner guilty of

contempt under the facts and circumstances detailed in this record, as this petitioner has contended and now contends, are a direct violation of the right of free speech and of free press, guaranteed him by the Federal Constitution.

"But, as has been held, very often, the question whether a state law or a tax imposed thereunder deprives a party of rights secured by the Federal Constitution, depends not upon the form of the Act, nor upon how it is construed or characterized by the State Court, but upon its practical operation and effect." *American Manufacturing Co. v. City of St. Louis*, (1918), 250 U. S. 459, p. 462, 39 S. Ct. 522; *Howard v. Fleming*, 191 U. S. 126, 24 S. Ct. 49.

Conclusion.

WHEREFORE, it is respectfully submitted that the petitioner has been aggrieved by the decision of the Circuit Court of Appeals of the Seventh Circuit, which by this petitioner, is believed to be erroneous, and that a writ of certiorari, directed to the said Court, should be issued, requesting that this cause be certified to the Supreme Court of the United States for determination, as hereinabove first petitioned for.

Respectfully submitted,

WILLIAM A. DOSS.
Petitioner, Pro Se.